

Caught in the web of retirement villages

Retirement villages - beware of the traps and rip-offs.

By: Ben Hills

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HIS voice is not much more than a hoarse whisper, thanks to the ravages of emphysema. He walks with gingerly stiffness, impeded by an iron brace on one leg. He cocks his head, straining to pick up conversations with the hearing aid implanted in one ear.

At the age of 89 the flesh grows weak, but there's nothing wrong with the spirit of Fred Myers, retired these many years from his job as a Supreme Court judge and now leading a campaign for justice for his fellow residents at the Fernbank retirement village at St Ives on Sydney's North Shore.

"If I was trying a case based on this contract," he says, brandishing a thick bundle of legal documents, "I would set it aside as unconscionable. Unconscionable." He rolls the word around on his palate, as if savouring the memory of judgments past.

The Macquarie Dictionary deals variously with the word. "Unreasonably excessive. Not in accordance with what is just or reasonable. Not guided by conscience. Unscrupulous." With all these definitions, Hizzoner, as he is known around the village, would agree.

Fred Myers has been trying for more than a year to sell his unit at Fernbank so that he can move closer to relatives in the country. But he finds himself trapped in a web of contracts that he - and many other Fernbank residents - believe are unconscionable.

For many months these elderly agitators have been lobbying to have an investigation into their complaints. They have written to the Government, to the Commissioner for Consumer Affairs, even as a last resort to the Independent Commission Against Corruption. All to no avail. So, finally, they decided to try their case in the media.

It is, at first glance, surprising that these issues should come to the boil at Fernbank, which is one of the showcases of the retirement village industry - exclusive, expensive, the Vauclose of old folks' home units. A brick-paved road (Angina Hill to some of the residents) winds down through 4.5 hectares of immaculately landscaped grounds overlooking the Ku-ring-gai wildflower park.

Set among the gardens are clinker-brick buildings two and three storeys high (every level connected by slow-moving lifts with special slow-closing doors for those who are not so nimble) containing 156 one-, two- and three bedroom apartments, which even in these depressed times range in price from \$215,000 to (swallow deeply) \$515,000.

Local real estate agents would fall over themselves to offer you mansions on quarter acres in streets round about for less than this ... but that's not the point, according to a spokesman for the company which operates the estate, a smart young man with a calculator called Nick Reid.

"We are not selling real estate, we are selling a life style," says Reid, operations manager for Gandel Retirement Enterprises Ltd, a company owned by the wealthy Toorak entrepreneur Aaron Jonna Gandel, himself approaching 60, and his family. Although the minimum age for people to buy into retirement villages is 55, at Fernbank the average age of the residents is 76, and perhaps three quarters of them, given the actuarial sexism of the Grim Reaper, are widows.

Wraiths on this bright midsummer morning, you can see old Fred and Ron and June and Mavis enjoying the facilities at Fernbank, white hair blowing under the dryers, a riff repeated over and over on the piano in the lounge, a backstroke so slow you think the swimmer must sink and drown in the heated indoor pool, the clunk of lignum vitae mallets on croquet balls, frankfurters simmering for lunch in the restaurant where, in the style of ocean liners of bygone days, name-plates mark the places where one may sit.

In short, Golden Pond. They come here, says young Mr Reid, for the security, for the 24-hour medical care (many residents wear around their necks, like rosaries, Vitalcall beepers, in case they collapse out of reach of an emergency button on the wall) for the access to meals, recreation, friends. "Come and see how you can enjoy more of the life you have made," says Fernbank's seductive brochure, which looks as though it has been shot with a generous smear of Vaseline on the camera lens.

It's an appeal which has been accelerating since the early 1970s when the Federal Government abolished its scheme of capital grants to "charity" retirement homes run by church and club and council, leaving the field open to private enterprise. Since then care and compassion have become less important than cash flow and capital gain, according to the industry's many critics.

Hooker, subsequently debauched by the jailed entrepreneur George Herscu, were the first to develop the Fernbank estate, in the mid-1980s, on the site of the Margaret Reid Hospital for Crippled Children. The part-completed village was bought by Gandel in 1987, and the group has rapidly moved to become the biggest (on capitalisation) retirement village company in NSW - 600 to 700 old people live at Fernbank and its three sister Sydney estates, Manors at Mosman, Mosman Grove and Pittwater Palms.

In NSW alone, about 100 other development companies have jumped onto the bandwagon in the past decade or so, one or two going broke, but most making (at least until recently) whopping profits. Apart from Gandel, the other big boys of what has been insensitively called "wrinklie-ranching" are Jennings, Corporate Equity, Milstern, and Baldwin Care.

Says Tony Baldwin, head of the Baldwin Care group and president of the NSW Retirement Villages Association, there are about 50,000 units on villages in Sydney and scattered across the State - a secret city of parents, grandparents and great-grand-parents bigger than Albury. Sixteen per cent, or 8,000 of them, live in strata title units like those at Fernbank.

Strata title is the way many investment advisers say to go. Most of the retirement villages are run by companies on a leasehold basis (with partly refundable "key money" of \$100,000 or more) or a strange device known as a "loan licence" where you lend the developer the \$100,000 and get some of it back if you want to move. Only with strata titles do you get a piece of paper giving you the right to sell when you want, to whom you want, for a price you want. Or so they say.

The crux of the complaint by people like Fred Myers is that the contracts people are required to sign when they move into these villages effectively do away with many of their rights under the Strata Titles Act. In fact, a submission by the Australian Consumers' Association and the United Retirement Village Residents' Association to a government committee

currently reviewing the legislation, argues that as well as being unconscionable these contracts may be illegal.

First, retirees who buy into the villages believing they have normal freehold title soon discover that in fact they have little or no control over the "body corporate" which is supposed to run the public areas of the villages- or the hefty fees, currently about \$50 a week. At Fernbank, the management of the estate is in the hands of Fernbank Management Pty Ltd (another Gandel company) in perpetuity. It can never be sacked.

The second serious drawback in buying into a retirement village is that, unlike ordinary strata units, the owners do not have the right to sell to whom they want, when they want, for the price they want. In many villages the sale process is controlled by the management company which (according to the submission) may delay the sale for years by setting an unrealistically high price.

The third and most intractable problem involves what are known as "deferred management fees". When a unit is sold, the management company extracts a fee of between 2.5 and 3.5 per cent per annum of the sale price - in the example used (see graph), based on a very conservative guess of 5 per cent inflation, a unit would cost \$15,000 a year, and after 10 years would be worth less than half in real terms what it cost. And these fees apply every time every unit is sold forever.

The gloomy conclusion of the submission is that Golden Pond very often finishes up as Turbid Tank. "Because they have entered into such (oppressive) contracts, many sick and elderly people find their (units) to be virtually unsalable. They are thus captive in their (units) for extended periods, irrespective of their health or financial circumstances, because the terms of the contract are weighted in favour of the owner/developer," it says.

One of the people who helped write this report is Ray McKenzie, an energetic 69-year-old who lives with his wife Jean in a leased unit on Lutanda Manor estate at Pennant Hills. Although he still believes Lutanda is one of the best retirement villages in the State, he says: "I was a naive little lad when I signed that contract. If I'd known then what I know now - that it's costing me \$10,000 a year - I never would have signed."

McKenzie says that many of the development companies which have moved into retirement village management in the past few years are "get rich quick operators" who see old people as "ripe for plucking". He says that many people sign contracts without understanding that "they are virtually signing away all their rights for ever more." In a survey of nearly 1,000 residents for the submission, 65 per cent said they had been tricked by "misleading and/or ambiguous advertising".

Although there is a retirement village "code of practice", brought in two years ago to regulate the industry, it is "a toothless tiger", according to McKenzie. In its first full year of operation there were only 15 complaints to the Commissioner for Tenancy, a Housing Department bureaucrat charged with monitoring and mediating problems.

"I could name you at least 100 people who have serious complaints," says Ray McKenzie "But they won't come forward because they are intimidated, they are afraid there will be reprisals, harassment, victimisation by the developers. They don't have the money to take a case to court, and even if they did it wouldn't be much good because they'd probably be dead before they got a decision."

Tony Baldwin, the industry spokesman, bristles at any suggestion that the residents of a retirement village should be able to exercise control over its management. "If you think a group of people in a village could get rid of the Jennings and the Gandels ... and assume

control of the village, you are wrong. (If that could happen) why would any person in their right mind want to build a village?

"They knew what their obligations were at the point of entry," says Baldwin: "The huge bulk of residents, 90 per cent of them, are very contented and happy. If anyone has contracted away certain rights as part of the deal and they are unhappy, the best option is to move away from the village."

At Fernbank, Nick Reid is prepared to apologise for one thing only - lack of communication. "It is our fault (that some people are unhappy)," he says. "We have not explained ourselves as well as we should."

As for charges that the "deferred management fees" were excessive, Reid says that the description is incorrect - it should be called a "deferred return on investment". He says that the units are originally sold for no profit, although research by Fred Myers appears to show that the Gandel group recouped its \$15 million purchase price within a couple of years of buying Fernbank from Hooker.

"That's just not true," says Reid, whipping out a calculator to show that Gandel is footing an interest bill of \$2,671 a day on the 10 units it is currently trying to sell. "Some of the residents say we are getting a huge cop up front when they buy the unit, another huge cop from maintenance, and another huge cop when the unit is sold. The truth is we only make our money when it is sold."

As for any suggestion that old people would be better off staying in their family homes and using services provided by the Commonwealth/State/council Health and Community Care program, Reid describes that as "pissing money down the gutter" and says nothing can match the facilities provided at places like Fernbank.

The joint submission provides a few suggestions to help redress the balance of contractual power back to the residents of retirement villages. It suggests the appointment of a special Ombudsman, "plain English" contracts, the abolition or capping of the dreaded "deferred management fees", and a provision for the developer to be obliged to buy back any unit which remained unsold after six months.

Good ideas, but unlikely to be adopted by a government.

Nor likely to appease Fred Myers, prisoner of Fernbank

Ben Hills

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